

SAN JUAN COAL CO.

IBLA 84-916

Decided November 16, 1984

Appeal from a decision of the New Mexico State Office, overruling objections to readjusted terms of coal lease NM 315559.

Appeal dismissed.

1. Appeals -- Rules of Practice: Appeals: Timely Filing

Under the express terms of 43 CFR 4.411(a), a person who wishes to appeal a decision to the Board of Land Appeals must file his notice of appeal in the office of the officer who made the decision (not the Board). This requirement is strictly enforced. Thus, where a notice of appeal from a decision by a state office of BLM is filed only with the Board of Land Appeals and the Field Solicitor's Office, not with BLM, an appeal is not initiated, and, if no other notice is timely filed in the correct office, the appeal must be dismissed.

APPEARANCES: Ann Victoria Scott, Esq., for San Juan Coal Company; Gayle E. Manges, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

The procedural history of this case is not in dispute. On June 29, 1984, the New Mexico State Office, Bureau of Land Management (BLM), issued a decision overruling the objections of San Juan Coal Company (SJCC) to readjusted terms of its coal lease, NM 315559. SJCC received the decision by certified mail on July 5, 1984.

On July 31, 1984, SJCC filed an original notice of appeal of this decision with this Board. It also sent a copy of it to the Office of the Field Solicitor, Santa Fe, New Mexico, which arrived there on July 30, 1984. However, the notice of appeal was not sent to BLM. SJCC has acknowledged that its notice of appeal was inadvertently filed with the wrong office, but argues that it has made a good faith effort to file its appeal properly, in view of its serving a copy of the notice on BLM's attorneys within the time allowed.

[1] Departmental regulation 43 CFR 4.411(a) provides as follows:

§ 4.411 Appeal; how taken, mandatory time limit.

(a) A person who wishes to appeal to the Board [of Land Appeals] must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. The notice of appeal * * * must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing. [Emphasis supplied.]

BLM's decision expressly advised SJCC to this effect, stating that, "[i]n the event of an appeal, the notice must be timely filed in this office," and cautioned that, "[t]o avoid summary dismissal of the appeal, there must be strict compliance with the regulations." (Emphasis supplied.)

The purpose of the requirement that the notice of appeal be filed with the office of the officer who made the decision (the "place-of-filing" rule) is to provide first notice to such office, in this case BLM. BLM is the exclusive custodian of records for matters on which it renders decisions. Neither the Board nor the Solicitor has any information whatsoever in its possession about matters pending before BLM. When a notice of appeal is filed with BLM, it then forwards this information to the Board and, in some cases, to the Solicitor, for review in connection with the appeal. Were we to allow appellants to violate the place-of-filing rule, it would be impossible to ascertain whether BLM is aware that a notice of appeal has been filed without communicating with it in every case. In view of the large number of appeals to this Board, this would present an insupportable administrative burden.

The place-of-filing rule also fosters administrative and program efficiency for BLM. Pursuant to the provisions of 43 CFR 4.21, the timely filing of a notice of appeal suspends the effect of the decision appealed from, except as otherwise provided by law or regulation. The most expedient way for the purposes of this regulation to be fulfilled is for notices of appeal to be filed with the proper BLM office.

Thus, for the sake of administrative convenience, the Department promulgated regulations governing place of filing, and BLM has been careful to notify appellants of these regulations. SJCC was expressly advised by BLM, both of the requirement that its appeal must be filed with BLM and not with the Board, and of the consequences of its failure to file it properly. Accordingly, it works no injustice to enforce this requirement strictly.

Filing a copy of the notice of appeal with the Field Solicitor did not meet the place-of-filing requirements of 43 CFR 4.411(a). The Field Solicitor's Offices are separate from those of the New Mexico State Office, BLM. The requirement that an appellant serve the Regional or Field Solicitor is set out as an independent requirement at 43 CFR 4.413.

It is unclear whether SJCC's notice of appeal has ever actually been filed with BLM. However, it is certain, and SJCC has admitted, that no

notice of appeal was filed with BLM within the mandatory 30-day time limit established in 43 CFR 4.411(a), or within the 10-day grace period established in some circumstances by 43 CFR 4.401(a). Under 43 CFR 4.411(b), "[i]f a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken." Accordingly, SJCC's notice of appeal may not be considered.

Even assuming that SJCC's failure to file correctly were inadvertent, we would be bound to enforce the provisions of 43 CFR 4.411(a), since they determine the jurisdiction of the Board to hear an appeal. The language chosen for this section leaves no room to question that the place-of-filing requirement is mandatory and, thus, not subject to waiver. See Red Rock Gold & Recreational Association, Inc., 77 IBLA 87 (1983). In the absence of a timely notice of appeal, the Board lacks jurisdiction to consider SJCC's appeal. Gary T. Suhrie, 75 IBLA 9 (1983); James M. Chudnow, 72 IBLA 60 (1983); and cases cited.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge